



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 12, 1998

Mr. David Méndez  
Bickerstaff, Heath, Smiley,  
Pollan, Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR98-0430

Dear Mr. Méndez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113042.

The Austin Independent School District (the "district"), which you represent, received a request for information from Mr. Robert D. Hall under the Open Records Act on November 20, 1997. You requested a decision from this office on behalf of the district on December 9, 1997. Consequently, you failed to request a decision within the statutory deadline established under section 552.301(a) of the Government Code.

Section 552.301(a) requires a governmental body to release requested information or to request a decision from the attorney general within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within the specified time period, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See Hancock*, 797 S.W.2d at 381.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise section 552.117 of the Government Code because the release of information made confidential under this section could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352.

In this regard we note that the representative sample of documents you submitted to this office contains district employees' home addresses and social security numbers. Section 552.117(1) of the Government Code requires that the district withhold its employees' home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code.

Assuming the subject employees have made such an election, we conclude that these types of information must be withheld. However, even if such an election has not been made, we note that section 552.117(2) makes confidential the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

You have not shown compelling reasons why any of the remaining requested information should not be released. In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. *See also* Gov't Code § 552.352 (distribution of confidential information is criminal offense).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/glg

Ref: ID# 113042

Enclosures: Submitted documents

cc: Mr. Robert D. Hall  
1721 Harliquin Run  
Austin, Texas 78758  
(w/o enclosures)